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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL KEYS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee.

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No. 49A02-0512-PC-1177

APPEAL FROM THE MARION SUPERIOR COURT,
CRIMINAL DIVISION, ROOM 2
The Honorable Robert Altice, Judge
Cause No. 49G02-0112-CF-2361

August 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, Michael Keys, challenges the trial court's denial of his Motion for Credit for Completion of Educational Degree.

We affirm.

The record reveals that on June 12, 2002, Keys pleaded guilty to one count of robbery as a Class B felony. The trial court subsequently sentenced Keys to ten years of incarceration, which was to run concurrently with the sentence imposed in another cause. On March 29, 2005, while still incarcerated, Keys received a "High School Diploma" from Continental Academy based in Coral Gables, Florida. Pursuant to Indiana Code § 35-50-6-3.3 (Burns Code Ed. Supp. 2005), a prisoner who receives a high school diploma is entitled to receive one year of credit time against his sentence if he also meets certain other requirements. Keys apparently requested that the Department of Correction ("DOC") apply the statutory one-year credit for the completion of a high school diploma because on December 12, 2005, the DOC issued a letter denying his request. This letter reads in pertinent part:

"I have received your letter requesting credit time for a high school diploma earned through the Continental Academy correspondence courses.

Continental Academy is not accredited by nor recognized by Florida's Department of Education as a high diploma [sic] nor does it meet the requirements for a high school diploma set by the Indiana Department of Education, therefore we are unable to accept it for credit time purposes." App. at 29 (emphasis in original).

However, on November 17, 2005, before the DOC issued this letter, Keys filed with the trial court a pro se Motion for Credit for Completion of Educational Degree. In this motion, Keys claimed that he was entitled to 365 days credit for completion of a high

school diploma which he claimed the DOC had refused to grant him. That same day, in a hand-written note at the bottom of Keys's motion, the trial court wrote, "Denied. Determination of and granting/denying educational credit time is strictly in DOC jurisdiction."¹ App. at 38. On December 5, 2005, the trial court received a letter written by Keys dated November 23, 2005, again asking the trial court to order the DOC to grant him credit time for his high school degree. The trial court added a hand-written note at the end of the letter which stated, "Ct. reviews[.] The Defendant has already filed a Notice of Appeal on this issue, upon which the ct. has acted." App. at 22. This note is dated December 6, 2005, and the trial judge's signature is dated the following day. According to the chronological case summary, Keys filed a pro se notice of appeal on December 6, 2005.

Upon appeal, Keys claims that the trial court and DOC are in error to deny him credit time for receiving a diploma from an out-of-state school. According to Keys, the issue is one of accreditation in that Continental Academy claims to be accredited, whereas the DOC claims that the Academy is not. The State argues that Keys failed to establish that Continental Academy meets the requirements for an out-of-state school as set forth in relevant case law.

We first observe that Keys filed his motion for credit time with the trial court on November 17, 2005. Keys claims in his appellant's brief that he "repeatedly petitioned" the DOC for credit time for receiving his diploma. Appellant's Brief at 1. The only

¹ Keys notes that the chronological case summary entry for November 17, 2005, appears to erroneously state that the trial court granted Keys's motion. The trial court's notation on the motion, however, clearly indicates that the motion was denied.

citation to the record in support of this claim is to the letter he received from the DOC denying his request for credit time. However, the DOC letter was not issued until December 15, 2005—almost a month after Keys had filed his motion with the trial court. Keys’s motion, which is verified, simply claims that the DOC “has not awarded Defendant any credit toward completion of his sentence pursuant to the provisions of the statute” App. at 38. Yet there is nothing in the record before us which would indicate that the DOC had ever denied any request by Keys for educational credit time before he filed his motion with the trial court. As explained in Sanders v. State, 816 N.E.2d 75, 78 (Ind. Ct. App. 2004), “application for credit time must be made to and the initial ruling thereon made by the DOC when the educational achievement was accomplished after sentencing” (emphasis supplied). Here, so far as we can determine, Keys did not wait until the initial ruling had been made by the DOC to deny his request for educational credit time before he filed his motion with the trial court. In this sense, his motion was premature, and the trial court acted properly in denying it. See id.

Furthermore, even if Keys’s motion had been properly before the trial court, he would still not prevail. Motions for educational credit time are generally treated as post-conviction petitions. See McGee v. State, 790 N.E.2d 1067, 1068 (Ind. Ct. App. 2003).² A post-conviction petitioner must establish his grounds for relief by a preponderance of the evidence. Id. at 1069 (citing Ind. Post-Conviction Rule 1(5)). A petitioner who has

² A court may entertain a petition for habeas corpus where the inmate alleges that he is entitled to immediate release. See id. at 1069.

been denied post-conviction relief is appealing from a negative judgment and must convince us upon appeal that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. Id. We will therefore disturb the post-conviction court's decision as being contrary to law only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court reached the opposite conclusion. Id.

The statute controlling educational credit time is I.C. § 35-50-6-3.3, which provides in part:

“(a) In addition to any credit time a person earns under subsection (b) or section 3 of this chapter, a person earns credit time if the person:

- (1) is in credit Class I;
- (2) has demonstrated a pattern consistent with rehabilitation;
- (3) successfully completes requirements to obtain one (1) of the following:

(A) A general educational development (GED) diploma under IC 20-20-6, if the person has not previously obtained a high school diploma.

(B) A high school diploma.

(C) An associate's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

(D) A bachelor's degree from an approved institution of higher learning (as defined under IC 20-12-21-3).

* * *

(d) The amount of credit time a person may earn under this section is the following:

(1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-20-6.

(2) One (1) year for graduation from high school.

(3) One (1) year for completion of an associate's degree.

(4) Two (2) years for completion of a bachelor's degree. . . .”
(emphasis supplied).

As held in McGee, there is no basis in either the language of the statute or the purpose behind it which would justify a DOC policy of denying credit time for a high school diploma not earned in Indiana provided that “the requirements for earning the out-of-state diploma are similar to Indiana’s requirements.” 790 N.E.2d at 1070. The court in McGee observed that subsections (a)(3)(C) and (D), regarding credit time for earning associate’s or bachelor’s degrees from an “approved institution of higher learning,” refer to the definition of that term found in the Education Title of the Indiana Code. Id. Although I.C. § 20-12-21-3 also contains a definition of an “approved secondary school,” the educational credit time statute does not similarly refer to this definition when using the term “high school diploma.” See McGee, 790 N.E.2d at 1070. Nevertheless, the McGee court looked to this statutory definition of an “approved secondary school,” which is:

“‘Approved secondary school’ means a public high school located in the state and any school, located in or outside the state, that in the judgment of the superintendent provides a course of instruction at the secondary level and maintains standards of instruction substantially equivalent to those of public high schools located in the state.”³ I.C. § 21-12-21-3(3) (emphasis supplied).

The McGee court then held, “that the [educational credit time] statute does not preclude a person from earning credit time for a diploma granted by an out-of-state school as long as the standards of instruction for earning that diploma are substantially similar to those in

³ The current version of this statute retains the same definition of an “approved secondary school.” See I.C. § 21-12-21-3(3) (Burns Code Ed. Repl. 2005).

Indiana.” 790 N.E.2d at 1070. The court ultimately reversed the denial of McGee’s petition.⁴ Id. at 1070-71.

In the present case, the State relies upon the holding in McGee and argues that Keys did not establish that Continental Academy meets the requirements for an out-of-state school as set forth in McGee. We agree. Here, although Keys submitted evidence that Continental Academy was accredited by the “National Association for the Legal Support of Alternative Schools,” App. at 31, there is nothing in the record to demonstrate that the Academy’s standards of instruction for earning a diploma were substantially similar to those in Indiana. See McGee, 790 N.E.2d at 1070. Thus, even if the trial court should have considered the merits of Keys’s motion, we cannot say that the trial court would have erred in denying such motion because Keys did not establish that the institution which issued his diploma met the requirements for an out-of-state school as set forth in McGee.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.

⁴ Still, the court noted that to be entitled to the credit time, McGee would have to show that he was in credit class I and had demonstrated a pattern consistent with rehabilitation. Id. at 1071. The DOC had denied McGee’s claim solely because his diploma was earned from an out-of-state high school; therefore, the court remanded with instructions that the trial court send the case back to the DOC for an initial review of McGee’s entitlement to credit. Id.